IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 7355 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRA CHANDRAKANT THAKKAR

Versus

SATRARAM PADMARAM CHAUDHARY (JAT)

Appearance:
MR VG DAVE for MR YOGESH S LAKHANI for Appellants
Respondent No. 1 deleted
Respondent No. 2 served
MR PV NANAVATI with MR VP NANAVATI for Res. No. 3

CORAM : MR.JUSTICE N.G.NANDI
and
MR.JUSTICE J.R.VORA

Date of decision: 05/04/2002

ORAL JUDGEMENT (Per : MR.JUSTICE N.G.NANDI)

1. This Appeal under Section 173 of the Motor Vehicles Act is directed against the award and judgment dated 21.9.1998 passed under Section 166 of the Act in Motor Accident Claim Petition No. 910/97 by the Motor Accident Claims Tribunal (Main) at Rajkot, District Rajkot, whereby the Tribunal awarded the amount of Rs. 1,10,000/- with interest at the rate of 12% from the date of petition till the date of realisation of the amount if the amount is deposited within three months from the date of order, failing which, interest at the rate of 15% on the awarded amount from the date of petition till the realisation of the amount.

2. It is jointly submitted by the learned counsel appearing for the parties that since the facts are in dispute and the appeal is required to be decided on the lines of the judgment delivered by the Division Bench of this Court in First Appeal No. 25 of 2002, the record and proceedings of the case are not required to be requisitioned from the Trial Court.

3. It is submitted by Mr.V.G.Dave for Mr. Y.S.Lakhani for the appellants that the victim was aged about three years and 9 months on the date of the accident, the Tribunal erred in estimating his notional income at Rs. 500/- per month instead of Rs. 1500/- per month. The Tribunal further erred in applying the multiplier of 15 years and considering the age of the deceased, the proper multiplier would have been 18 years. The present appeal is restricted only to these points.

4. It is not disputed by Mr. V.P. Nanavati, learned Advocate for respondent No.3 Insurance Company that the deceased was a young child, aged 3 years and 9 months on the date of the accident. According to the structured formula, the notional income of the deceased has been Rs. 1500 per month. Taking the notional income of the deceased at Rs.1500/- per month and deducting 1/3rd amount by way of personal expenses, which would come to Rs. 1,000/-per month i.e. Rs. 12,000/- per year and applying the multiplier of 18 years having regard to the age of the victim, the amount would come to Rs. 2,16,000/- and deducting Rs.90,000/- awarded on he head of loss of dependency benefits, additional amount of Rs. 1,26,000/- is required to be paid to the claimants.

5. As far as the application of multiplier by the Tribunal is concerned, the Tribunal cannot be said to be justified in applying the multiplier of 15 years as the deceased was three years and 9 months on the date of accident and the proper multiplier would have been 18

looking to the age of the deceased.

6. Under the circumstances, the impugned award and judgment is modified to the above extent and the appeal therefore deserves to be partly allowed to the extent pointed out above.

7. In the result, the Appeal is partly allowed to the extent above. The appellants would be entitled to the additional amount of Rs. 1,26,000/- with interest at the rate of 12% per annum from the date of petition till the date of realisation of the amount. The additional amount, as aforesaid, shall be deposited by respondent No.3 Insurance Company within four months from today. No order as to costs.

(N.G.Nandi, J.) (J.R. Vora, J.)

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